IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 3630 of 1992

to

SPECIAL CIVIL APPLICATION No. 3640 of 1992
with
SPECIAL CIVIL APPLICATION No. 8599 of 1992

For Approval and Signature:

HON'BLE MR.JUSTICE M.R.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DIRECTOR OF CAMPUS

Versus

APPELLATE AUTHORITY

Appearance:

1. Special Civil Application No. 3630 of 1992
MR DG CHAUHAN for Petitioner No. 1
Mr. KT Dave, AGP for Respondent No. 1
RULE SERVED for Respondent No. 2

CORAM : HON'BLE MR.JUSTICE M.R.SHAH

Date of decision: 22/04/2004

COMMON ORAL JUDGEMENT

Gujarat Agricultural University, the petitioner had preferred the present Special Civil Applications challenging the order passed by the authority under the Payment of Gratuity Act, 1972 (hereinafter referred to as 'the Act') and also the order passed by the appellate authority under the Act by which the provisions of the Act are made applicable to the employees of the Gujarat Agricultural University also.

2. The employees of the Gujarat Agricultural University approached the controlling authority under the Act and the controlling authority, Bhavnagar by judgment and order dated 15th July 1989 held that the petitioner should pay the amount of gratuity to the concerned employee and also held that the provisions of the Act are applicable.

3. Being aggrieved by the aforesaid order passed by the controlling authority, Bhavnagar, dated 15th July 1999 and on other dates, the petitioner preferred appeals before the appellate authority under the Act. It was mainly contended on behalf of the petitioner University that the University is engaged in teaching, research and development in agriculture and therefore the provisions of the Act are not applicable to it. The appellate authority under the Act negatived the said contention and held that in view of the judgment of the Hon'ble Supreme Court in the case of Bangalore Water Supply Corporation, the University is considered to be an industry and under the other Act also it an establishment and the Act is made applicable and therefore dismissed the appeals preferred by the petitioner.

4. The petitioner being aggrieved by the aforesaid two orders passed by the appellate authority as well as the controlling authority had preferred the present Special Civil Applications under Article 226/227 of the Constitution of India.

5. At the time of hearing of the present Special Civil Applications, the learned advocate appearing on behalf of the petitioner had relied upon interim order passed by this Court in Special Civil Applications No. 6649 of 1990 and 2994 of 1991 in which identical question was raised by the very petitioner University and the order passed by the controlling authority under the Act was challenged wherein interim relief was granted by this Court. Considering the orders passed in the aforesaid petitions, this Court admitted the present Special Civil Applications and granted the interim relief. However

looking to the fact that the amount was too small, this Court passed an order allowing the concerned employees to withdraw the said amount of gratuity by executing personal bond by the concerned respondent-workman and thus the amount of gratuity was already withdrawn by the concerned workmen. This Court has also passed an order while admitting the present Special Civil Applications that the present Special Civil Applications to be heard with Special Civil Application No. 6649 of 1990 in which identical question with regard to applicability of the provisions of the Act is challenged by the very petitioner in the aforesaid Special Civil Application. However, from the record it seems that the aforesaid Special Civil Applications No. 6649 of 1990 and 2994 of 1991, in which interim order was passed and on which reliance was placed by the petitioner, are already disposed of by this Court (Coram: H.K. Rathod, J.) by order dated 2.5.2000 dismissing the same and confirming the orders passed by the appellate authority as well as the controlling authority.

6. When the aforesaid judgment and order passed by this Court dated 2.5.2000 was brought to the notice of Shri Chauhan, Shri D.G. Chauhan, learned advocate appearing on behalf of the petitioner has submitted that by issuing notification dated 3rd April 1997 the Central Government in exercise of the powers conferred by clause (c) of sub-section (3) of Section 1 of the Payment of Gratuity Act, 1972, specified educational institutions in which 10 or more persons are employed or were employed and on any date preceding 12 months as a class of establishments to which said Act shall apply, and as per the said Notification the Act will be applicable from the date of publication of that notification, and as the Notification was of 1997 the cases which are prior to 1997 under the Act would not be applicable and therefore the orders passed by the controlling authority and the appellate authority under the Act are nullity. He has also submitted that this point was not argued by the learned advocate appearing for the petitioner in the aforesaid group of Special Civil Applications which came to be dismissed by this Court (Coram: H.K. Rathod, J.). Therefore, he requested to quash and set aside the impugned orders.

7. On the other hand, Shri K.T. Dave, learned AGP appearing on behalf of the respondent No.1 had supported the orders passed by the controlling authority as well as the appellate authority under the Act. He has submitted that in view of the judgment and order passed by this Court dated 2.5.2000 in aforesaid Special Civil

Applications No. 6649 of 1990 and 2994 of 1991 and other cognate matters it is not open for the petitioner now to argue another case. He has submitted that the controversy which is raised in the present Special Civil Applications is already now covered by the judgment of this Court in the case of Gujarat Agricultural University vs. Laxmiben Chhibabhai Talavia and Others in Special Civil Applications No. 9752 of 1998 and other matters. He has also further submitted that while getting admission of the present Special Civil Applications, the petitioner had relied upon the order passed by this Court in aforesaid Special Civil Applications No. 6649 of 1990, 2994 of 1991 etc., and therefore the present Special Civil Applications are required to be dismissed. Shri Dave has also further submitted that this Court considering the Notification dated 3rd April 1997 and considering the Proviso to the said notification had come to the conclusion that the Act would be applicable to the petitioner University and therefore requested to dismiss the present Special Civil Applications.

8. I have heard the learned advocates appearing for the parties. It is required to be considered that in all the impugned orders the amount which is required to be paid to the concerned workmen by way of gratuity is a very meagre amount ranging between 2,000 to 5,000 rupees and as stated above all the workmen had withdrawn the amount of gratuity pursuant to the interim order passed by this Court in the aforesaid Special Civil Applications.

9. So far as the orders passed by the controlling authority and the appellate authority under the Act are concerned, identical orders were passed by the authority in Special Civil Application No. 9752 of 1998 and allied matters, and all the aforesaid Special Civil Applications filed by the very petitioner challenging the order passed by the controlling authority as well as the appellate authority under the Act are dismissed.

10. I have gone through the judgment and order passed by this Court (Coram: H.K. Rathod, J.) dated 2.5.2000 in the aforesaid Special Civil Applications. I am in full agreement with the judgment and order passed by this Court dated 2.5.2000 in the aforesaid Special Civil Applications. It is also pertinent to note that the said judgment and order dated 2.5.2000 of this Court passed in aforesaid Special Civil Applications is accepted by the petitioner University and the same is not challenged before higher forum and hence it had become final.

11. I have also considered additional argument advanced on behalf of the petitioner in the present Special Civil Application to the effect that the Act of 1972 is made applicable to the educational institutions as per notification dated 3rd April 1997 wherein it is specifically stated that the said Act shall apply with effect from the date of publication of the notification. Now therefore the argument is advanced that in respect of the cases which are prior to 1997 the authority under the Act would not have jurisdiction to pass an order to pay the amount of gratuity and such orders would be nullity. A proviso to the said Notification dated 3rd April 1997 reads as under;

> "Provided that nothing contained in this notification shall affect the operation of the notification of Ministry of Labour S.O. No. 239 dated 8th January 1982."

The Notification No. 239 dated 8th January 1982 reads as under;

> "G.S.R. 239.___ In exercise of the powers conferred by clause (c) of sub-section (3) of Section 1 of the Payment of Gratuity Act, 1972 (39 of 1972), the Central Government hereby specified 'local bodies' in which ten or more persons are employed, or were employed, on any day of the preceding twelve months, as a class of establishments to which the said Act shall apply with effect from the date of publication of this notification in the Official Gazette."

Now, considering the judgment and order dated 2.5.2000 passed by this Court in aforesaid Special Civil Application, whereby the effect of the above Proviso is also considered, and it seems that considering the petitioner as a local body, the Act of 1972 is made applicable to the petitioner University in pursuance to the Notification No. 239 dated 8th January 1982. It, therefore, cannot be said that the petitioner University cannot be said to be falling within the definition of 'local body', and if the petitioner University is considered to be a 'local body', then pursuant to the Notification No. 239 dated 8th January 1982, the Act was made applicable to the petitioner University also and particularly in view of the Proviso to the Government

Notification dated 3rd April 1997 it cannot be said that so far as the petitioner University is concerned the Act would be applicable only from the date of publication of the Notification dated 3rd April 1997.

12. At this stage, Shri DG Chauhan, ld. advocate for the petitioner had tried to point out that the petitioner University cannot be said to be a 'local body'. This contention is required to be rejected as The Gujarat Agricultural University is a 'local body' and therefore by virtue of the Notification of 1982, the Act of 1972 was made applicable. Even otherwise, in view of the judgment and order passed by this Court dated 2.5.2000 passed in aforesaid Special Civil Application in which identical orders were challenged and the said petitions came to be dismissed and it has become final, the present Special Civil Applications are also required to be dismissed.

13. In view of the aforesaid facts and circumstances, all the petitions are dismissed. Rule is discharged with no order as to costs. Ad-interim relief stands vacated.

rmr. [M.R. Shah, J.]